

Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

Start date: 27 June 2018
End date: 19 September 2018



Introduction

The Information Commissioner (the Commissioner) is calling for evidence and views on the Age Appropriate Design Code (the Code).

The Code is a requirement of the Data Protection Act 2018 (the Act). The Act supports and supplements the implementation of the EU General Data Protection Regulation (the GDPR).

The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet. Once it has been published, the Commissioner will be required to take account of any provisions of the Code she considers to be relevant when exercising her regulatory functions. The courts and tribunals will also be required to take account of any provisions they consider to be relevant in proceedings brought before them. The Code may be submitted as evidence in court proceedings.

Further guidance on how the GDPR applies to children's personal data can be found in our guidance [Children and the GDPR](#). It will be useful to read this before responding to the call for evidence, to understand what is already required by the GDPR and what the ICO currently recommends as best practice. In drafting the Code the ICO may consider suggestions that reinforce the specific requirements of the GDPR, or its overarching requirement that children merit special protection, but will disregard any suggestions that fall below this standard.

The Commissioner will be responsible for drafting the Code. The Act provides that the Commissioner must consult with relevant stakeholders when preparing the Code, and submit it to the Secretary of State for Parliamentary approval within 18 months of 25 May 2018. She will publish the Code once it has been approved by Parliament.

This call for evidence is the first stage of the consultation process. The Commissioner seeks evidence and views on the development stages of childhood and age-appropriate design standards for ISS. The Commissioner is particularly interested in evidence based submissions provided by: bodies representing the views of children or parents; child development experts; providers of online services likely to be accessed by children, and trade associations representing such providers. She appreciates that different stakeholders will have different and particular areas of expertise. The Commissioner welcomes responses that are limited to specific areas of interest or expertise and only address questions within these areas, as well as those that address every question

asked. She is not seeking submissions from individual children or parents in this call for evidence as she intends to engage with these stakeholder groups via other dedicated and specifically tailored means.

The Commissioner will use the evidence gathered to inform further work in developing the content of the Code.

The scope of the Code

The Act affords the Commissioner discretion to set such standards of age appropriate design as she considers to be desirable, having regard to the best interests of children, and to provide such guidance as she considers appropriate.

In exercising this discretion the Act requires the Commissioner to have regard to the fact that children have different needs at different ages, and to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

During Parliamentary debate the Government committed to supporting the Commissioner in her development of the Code by providing her with a list of 'minimum standards to be taken into account when designing it.' The Commissioner will have regard to this list both in this call for evidence, and when exercising her discretion to develop such standards as she considers to be desirable

In developing the Code the Commissioner will also take into account that the scope and purpose of the Act, and her role in this respect, is limited to making provision for the processing of personal data.

Responses to this call for evidence must be submitted by 19 September 2018. You can submit your response in one of the following ways:

Online

Download this document and email to:

childrenandtheGDPR@ICO.org.uk

Print off this document and post to:

Age Appropriate Design Code call for evidence
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire SK9 5AF

If you would like further information on the call for evidence please telephone 0303 123 1113 and ask to speak to the Engagement Department about the Age Appropriate Design Code or email childrenandtheGDPR@ICO.org.uk

Privacy statement

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Section 1: Your views and evidence

Background

Founded in 1944, the British Toy & Hobby Association (BTHA) is the official organisation representing toy manufacturers. The BTHA has 138 members ranging from international toy giants to small family-run businesses that together account for more than 85% of the UK toy market. Membership of the BTHA shows the member's commitment to adhere to the BTHA Code of Practice under the umbrella of the Lion Mark promoting the highest standards of safety and quality in the manufacture of toys, games and playthings.

Aside from officially representing the interests of Britain's toy manufacturers, the BTHA also has wider priorities, including promoting the benefits of play through the Make Time 2 Play campaign, raising money via the industry's charity the Toy Trust to help disadvantaged children, and organising the annual Toy Fair, which showcases the British toy industry.

Please provide us with your views and evidence in the following areas:

Development needs of children at different ages

The Act requires the Commissioner to take account of the development needs of children at different ages when drafting the Code.

The Commissioner proposes to use their age ranges set out in the report Digital Childhood – addressing childhood development milestones in the Digital Environment as a starting point in this respect. This report draws upon a number of sources including findings of the United Kingdom Council for Child Internet Safety (UKCCIS) Evidence Group in its literature review of Children's online activities risks and safety.

The proposed age ranges are as follows:

3-5
6-9
10-12
13-15
16-17

Q1. In terms of setting design standards for the processing of children's personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

Not at all appropriate
Not really appropriate
Quite appropriate
Very appropriate

Q1A. Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children's personal data by providers of ISS (online services),

We have spoken to a number of experts within our industry and beyond. We believe that the 3-5 bracket is likely to be accessing content with parental support and is very young to be understanding the concept of consent and risk. Therefore, we would suggest that guidance might be better, at this age, to recognise parental input by asking for parental recognition of any design standards and policies.

The ages 13 to 17 are likely to cause some challenges for companies. It would be useful to have some guidance for companies on appropriate methods of obtaining consent for these ages as children of this age tend not to have identification for companies to ask for.

Q2. Please provide any views or evidence you have on children's development needs, in an online context in each or any of the above age brackets.

The speed of changes in children's development needs to be considered especially during early years. Additionally, there are individual differences between children of the same age, so this variance in maturity needs to be considered when setting age brackets.

All areas of children's development need to be considered. Children's cognitive ability to understand issues around privacy and information sharing needs to be considered along with their social and emotional development - these areas of development do not develop uniformly and one of the biggest factors in their development is experience and exposure to the issues. Therefore, whilst young children need protecting from harm, over-protection can de-skill them and delay them from being able to make their own decisions around online safety as they mature.

Key developmental milestones in a child's ability to give informed consent to data use include:

- his/her ability to understand risks
- his/her ability to accurately predict consequences of actions

Many of children's developmental needs can be supported and promoted online and the personalisation of many online activities enable children to have much more control and autonomy than they may have in other environments. This control and decision-making is largely beneficial to children's development but needs to be increased incrementally to reflect developmental changes. Providing different routes through which children can access online content (e.g. written instructions, pictorial instructions and audio instructions – depending on the age) may maximise children's access to and engagement with information.

The United Nations Convention on the Rights of the Child

The Data Protection Act 2018 requires the Commissioner to take account of the UK's obligations under the UN Convention on the Rights of the Child when drafting the Code.

Q3. Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the processing of children's personal data by providers of ISS (online services)

As a general overarching principle, a child's right to privacy should be balanced with a child's right to information and choice.

Aspects of design

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,
- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,
- the ability to understand and activate a child's right to erasure, rectification and restriction,
- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

Q4. Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

Default privacy settings

The GDPR requires a company to put in place appropriate technical and organisational measures to implement the data protection principles – ‘data protection by design and default’. The code should provide organisations with further guidance about the standards that the ICO will expect in this area for children. As an industry, we agree that the highest level of privacy should be the default setting, but companies need to have flexibility to evaluate what that is, dependant on the data and activity, as part of their own assessments. Organisations would benefit from understanding the ICO’s own interpretation of low risk and high-risk data processing, and acceptable means of collecting and processing that personal data. Clear guidance, with examples across different age categories if necessary, would aid data controllers to implement default privacy settings.

Data minimisation standards

The BTHA and its members support the data minimisation principle and only collecting personal data needed for the function of the product or service. However, obtaining age-verification and parental consent could be a challenge in line with this principle depending on the interpretation by the ICO as companies could end up collecting more data than has previously been necessary to meet the requirement of the GDPR. We believe that informing a child of their rights and how to activate them once they are competent and of age to do so (as well as implementing company retention policies) to be a more pragmatic solution than holding specific ages and DOB of children.

Guidance, including examples of data minimising practices when providing online services to children such as not asking for real names, DOB, ages of children but acceptance of tick boxes or email verification would be useful. Alternatively, leaving it open for companies to find their own solutions would be acceptable if a list of “don’t do’s” were to be provided.

Currently, the industry does not handle a lot of personal data but as technology moves on and there are safer and more secure ways to do so, there may become more of a need to collect personal data. For example, metadata is incredibly important to companies for innovation and product development helping to improve and update products and experiences for children. As technology moves on, and consumer expectation demands inbuilt technology, or improved product development, this type of metadata will become more important to every industry. The guidance

needs to be future-proofed to allow more data collection in the future within the realms of allowable behaviour under the GDPR.

The presentation and language of terms and conditions and privacy notices

The Children and the GDPR guidance suggests using child friendly ways of presenting privacy information such as diagrams, cartoons, graphics. The code needs to acknowledge and accept a range of methods to present this information as the appropriate method will vary for different business depending on their size, online services offered and resource. For example, a privacy video may be too costly for an SME to produce.

Whilst we specialise in communicating with children, particularly under 12s, presenting privacy information so it carries enough detail yet can still be understandable by a younger child is a particular challenge for businesses. Children may only start understanding the concept of 'privacy' and being able to make informed decisions based on their understanding of privacy from around 8+ and this will vary from child to child. This needs to be acknowledged in the meaning of the code.

Mixed aged users who are on the same online services, yet at very different development stages, could be a challenge for companies in deciding how best to present terms and conditions, and privacy notices. It would be useful to organisations when implementing the code if there was greater clarity on the ICO's interpretation of at what age a child is believed to be competent to understand privacy notices. We believe there is an opportunity for further research in this area to learn more and have members who have indicated a willingness to help explore this if that is of interest to you.

As with many of the new data protection requirements, educating consumers on privacy notices, and terms and conditions will be paramount to help consumers understand and activate their rights.

Uses of geolocation technology

When using geolocation technology, as an industry we would assume the user would be required to give consent to the use of this information, and consequently parental consent would be needed for children under 12. The code needs to make clear who is responsible for offering a solution to collecting geolocation information as part of privacy default settings. We understand that this should be the responsibility of the internet service provider that offers the technology rather than a brand within that service otherwise it could become incredibly difficult for children (and parents) to understand that every piece of content they interact with has different terms of use and to monitor that use: it would make more sense from a consumer interaction that the privacy settings on a platform are set across the whole of that content. We understand that there are

discussions taking place in this area in Europe as part of the ePrivacy Directive. Although it is likely that the UK will have left the EU before this is finalised, we wanted to ask if this would have an impact on this code in the future to reflect any changes at a European level?

To help organisations determine default privacy settings, such as automatic disabling, organisations would value guidance and clarity on how long the ICO believes consent should be valid for. This will help companies in their decision making.

Automated and semi-automated profiling

The GDPR states you should not subject children to decisions based solely on automated processing (including profiling) if these have a legal or similarly significant effect on them. We feel that this is an area which is currently quite vague, and organisations would welcome greater clarity and practical understanding to help them make informed decisions for profiling across different age bands. To help responsible companies get this right, it would be useful for the code to provide examples of practices deemed acceptable/unacceptable by the regulator. This would give companies a better understanding of how to collect data responsibly.

Sharing and resale of data

With this already covered in the ICO Data Sharing Code of Practice, we believe there should be nothing additional or specific to add in this code.

The strategies used to encourage extended user engagement

Organisations need to be free to develop and implement fun and engaging content in a way that they choose as long as their data processing activities are transparent and within the requirements of the law. This will be impacted by the ICO's interpretation of validity of consent to process for this purpose.

User reporting and resolution processes and systems

As with the presentation and language of terms and conditions / privacy notices, there needs to be acknowledgment of the need to explain how issues are reported and resolved to both children and their parents when directed at younger children. Again, the code should not force the use of solutions that may be too costly for businesses, to create a level playing field.

The ability to understand and activate a child's right to erasure, rectification and restriction

Like adults, children have the right to have their personal data erased, rectified or restricted in certain circumstances under the GDPR and organisations need to provide users with easy access to request erasure, rectification, and restriction of any of their personal data. We would ask that the principles of these rights need guidance to remain consistent to

both parents and children, but companies need to have the freedom to work out how best to deliver that information.

We agree that Children need to be able to understand their rights and how to act on them (particularly when a parent has given consent on their behalf) but it's important there is not a requirement that organisations have to reconfirm consent once the child is at the age of consent as addressed in the ICO's Children and the GDPR guidance. This may also reduce the need to ask for date-of-birth details during early consent processes. We agree it would be better for the activation of your rights to be addressed and transparent in clear privacy notices. This should be clarified in the code to help organisations understand the validity of consent given by a parent.

The ability to access advice from independent, specialist advocates on all data rights

As an industry we understand the need to consult with children when developing products and services specifically for them, and this is often practiced within our industry to ensure the needs of children are met. There are many different ways of fulfilling this practice and therefore seeking specialist child rights advocates or third-party facilitators shouldn't be a compulsory requirement.

Do the ICO have a list of specialist child's rights advocates in mind to guide organisations exploring this option?

Q5. Please provide any views or evidence you have on the following:

Q5A. about the opportunities and challenges you think might arise in setting design standards for the processing of children's personal data by providers of ISS (online services), in each or any of the above areas.

We have tried to address opportunities and challenges within the answers above although we would also like to highlight a few separate overarching points here:

The ICO and the age-appropriate design code needs to acknowledge how quickly technology is developing and the impact this will have on data protection. As technology and systems develop there will be an increase in the number of ways personal data can and will be collected for the functioning of products in the future, including better access to improved security systems, and safer ways to collect and handle personal data. For example, it is now common practice to use thumb print recognition rather than passwords or pin numbers. It is important that the standards in the design code are not so prescriptive that companies are restricted or discouraged from handling personal data or using new technologies to

collect personal data. For example, metadata is crucial for innovation and needed to help develop new products or update existing ones. This needs to be acknowledged by the ICO to ensure the code is futureproofed.

Another challenge we foresee, as we see with product safety, is enforcement and policing of any standards. It is important that the ICO recognises the difference between responsible and irresponsible companies and that this is reflected in enforcement action and fines. From our experience on product safety, we believe there are three types of companies which should be recognised; the responsible companies who always try to do the right thing, companies who may lack technical knowledge or expertise but want to do the right thing and simply need help and advice to help them get it right in the future, and then those companies who have no intention of meeting requirements. The responsible industry will invest heavily to meet regulation and as in the offline world, rogue businesses will take no notice and undercut responsible brands. As with the offline world we feel it's important this distinction is made to ensure the regulator works with and supports the responsible industry whilst targeting those bad actors to deter them in the future.

A final point is that the design standards should not require the use of third-parties or force the use of expensive methods so that it is difficult for smaller and medium companies to implement. There needs to be a level playing field created for all organisations, regardless of size to implement the code.

Q5B. about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

With our experience making children's products we believe it would be a good opportunity for the toy industry to work with the ICO in further development of the code to ensure it is workable, feasible and pragmatic for industry to implement whilst protecting children. A collaborative approach would be beneficial to producing solutions that are understood and accepted by both industry and consumers. BTHA members would be most interested in supporting the ICO in any further stakeholder engagement work and the BTHA would be happy to facilitate this work.

Q5C. about what design standards might be appropriate (i.e where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

Q5D. examples of ISS design you consider to be good practice.

We believe there are good examples within our membership and would be happy to put the ICO in contact with companies to support this piece of work.

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

Name: [REDACTED]

Email: [REDACTED]@btha.co.uk

Brief summary of what you think you could offer:

Access to members who would be willing to test out methods of engaging parents and children and testing out ICO guidance on practically implementing solutions with differing sizes of companies.

Further views and evidence

Q7. Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

It would be useful as a narrative, alongside the guidance, to explain the impact of Brexit on this advice. This is clearly meant to be a UK solution but it would be useful to companies to know if this will be more widely accepted as an interpretation across Europe, and whether there is likely to be areas of future divergence.

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	<input type="checkbox"/>
A body representing the views or interests of parents? Please specify:	<input type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
A provider of ISS likely to be accessed by children? Please specify:	<input type="checkbox"/>
A trade association representing ISS providers? Please specify: British Toy & Hobby Association	<input checked="" type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify:	<input type="checkbox"/>

**Thank you for responding to this call for evidence.
We value your input.**